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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Ahern Rentals, Inc.,

Plaintiff

v.

John Matthew Young,

Defendant

Case No.: 2:21-cv-02190-JAD-BNW

**Order Granting in Part Emergency Motion
for Temporary Restraining Order and
Setting Briefing Schedule on Emergency
Motion for Preliminary Injunction**

[ECF No. 5]

Ahern Rentals, Inc. contends that it employed John Matthew Young as an outside sales representative at its branches in Raleigh and Charlotte, North Carolina, until he quit in May 2021. It alleges that Young signed a non-competition, non-solicitation, and non-disclosure contract agreeing that, after his employment ended, he would not solicit or accept business from Ahern's customers, work for Ahern's competitors within a 100-mile radius of any store at which Young did business for a year, or disclose or use any of Ahern's trade secrets that he had acquired during his employment. The agreement also prohibited Young from taking possession of Ahern's confidential information or trade secrets. According to Ahern, Young broke each of these promises when he sent confidential Ahern documents to his personal email address, took a sales job with EquipmentShare.com, Inc., and successfully solicited one of Ahern's customers. Ahern thus sues Young for breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, and misappropriation of trade secrets.¹ It seeks injunctive and monetary relief.

¹ ECF No. 1-1 at ¶¶ 47–82 (complaint). Ahern also alleges injunctive relief as a claim for relief. *Id.* at ¶¶ 83–89. I construe those allegations as part of Ahern's prayer for relief because an injunction is a remedy, not a cause of action.

1 Ahern originally filed its complaint against Young in state court.² It sought a temporary
2 restraining order and preliminary injunction there,³ but Young removed the action before the
3 state court ruled on either. Ahern now moves on an emergency basis for both an order
4 temporarily restraining Young from engaging in five categories of conduct⁴ and a preliminary
5 injunction to the same effect.⁵ Young has not yet responded to any of Ahern's emergency
6 motions.⁶ Because I find that Ahern has met the standard for obtaining a narrowly tailored
7 restraining order with notice, I grant in part its motion for that relief and set an expedited briefing
8 and oral-argument schedule for its emergency motion for a preliminary injunction.

9 Discussion

10 The legal standard for issuing a temporary restraining order and the legal standard for
11 preliminary injunctive relief are “substantially identical.”⁷ Both are “extraordinary” remedies
12 and “never awarded as of right.”⁸ The Supreme Court clarified in *Winter v. Natural Resources*
13 *Defense Council, Inc.* that to obtain an injunction, the plaintiff “must establish that [it] is likely to
14 succeed on the merits, that [it] is likely to suffer irreparable injury in the absence of preliminary
15 relief, that the balance of equities tips in [its] favor, and that an injunction is in the public
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18 ² See ECF No. 1.

19 ³ ECF No. 1-2.

20 ⁴ ECF No. 5.

21 ⁵ ECF No. 6.

22 ⁶ Before Ahern filed this action, Young filed his own suit against Ahern in North Carolina state court, seeking declaratory and injunctive relief enjoining Ahern from enforcing its contract. ECF No. 5 at 8.

23 ⁷ See *Stuhlberg Int'l Sales Co. v. John D. Bush and Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the “analysis is substantially identical for the injunction and the TRO”).

⁸ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

1 interest.”⁹ The Ninth Circuit also recognizes an additional standard: “if a plaintiff can only show
2 that there are ‘serious questions going to the merits’—a lesser showing than likelihood of success
3 on the merits—then a preliminary injunction may still issue if the ‘balance of hardships tips
4 *sharply* in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”¹⁰

5 Based on the evidence that Ahern provides with its emergency motion for a temporary
6 restraining order, I find good cause to believe that Young has breached his agreement with
7 Ahern. While Young is ostensibly employed at EquipmentShare’s office in Ladson, South
8 Carolina (seemingly outside of the 100-mile restricted radius), he is working from his home in
9 Charlotte, where he previously performed services for Ahern.¹¹ He has also successfully
10 solicited at least one Ahern customer.¹² There is also good cause to believe that Young took
11 documents containing Ahern’s confidential and proprietary information concerning pricing
12 reports, business plans and pending projects, and information regarding customer leads.¹³ That
13 he has such information lends to the likelihood that he has or will misappropriate that
14 information by using it for his own benefit in his job with EquipmentShare. I also find that
15 Ahern has demonstrated that the equities tip in its favor and the public has a strong interest in
16 granting restraining orders in these circumstances. Although it is a closer call, I find that Ahern
17 has shown that it is likely to suffer further irreparable harm unless Young is restrained from
18 engaging in three categories of conduct. So I conclude that Ahern has met the standard for
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20 ⁹ *Id.* at 20.

21 ¹⁰ *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (quoting *All. for the Wild*
22 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

23 ¹¹ See ECF No. 5-2 at ¶ 25–26 (Vawter declaration).

¹² *Id.* at ¶ 22.

¹³ *Id.* at ¶ 29.

1 obtaining a narrowly tailored temporary restraining order against Young that prohibits him from
2 working as a sales representative within 100 miles of Ahern's Charlotte and Raleigh stores,
3 soliciting any of Ahern's customers, and using any of Ahern's trade-secret or confidential
4 information.

5 But for several reasons I decline Ahern's requests for a restraining order instructing that
6 Young is (1) prohibited from getting rid of evidence, (2) required to preserve evidence, and (3)
7 prohibited from encouraging any Ahern employee to quit or provide services to another
8 company.¹⁴ The Federal Rules of Civil Procedure already impose the first two obligations on all
9 parties and their counsel.¹⁵ There is no evidence showing that Young has or violated or is
10 inclined to violate these basic procedural rules. Finally, those requests are better resolved in the
11 context of a discovery motion.¹⁶ And as for encouraging Ahern employees to quit, Ahern offers
12 no evidence that Young has done or may do any such thing. So I deny Ahern's request for an
13 order restraining that conduct.

14 **Conclusion**

15 IT IS THEREFORE ORDERED that Ahern's emergency motion for a temporary
16 restraining order [ECF No. 5] is **GRANTED in part**:

- 17 1. Young is enjoined and prohibited from, directly or indirectly, being employed,
18 retained, or providing consulting, contracting, sales, or other services that involve the
19 same or similar services he performed at Ahern Rentals, Inc. (outside equipment sales or
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21 ¹⁴ See ECF 5 at 15–16, ¶¶ 3, 5.

22 ¹⁵ See, e.g., Fed. R. Civ. P. 26, 37.

23 ¹⁶ Ahern has filed an emergency motion for expedited discovery. ECF No. 7. Magistrate Judge Weksler has ordered Young to respond to that motion by December 22, 2021. ECF No. 9 (minute order).

1 rental) to any person or entity, including but not limited to EquipmentShare.com, Inc.,
2 that competes with Ahern within a 100-mile radius of Ahern's Raleigh and Charlotte,
3 North Carolina, branches;

4 2. Young is enjoined and prohibited from attempting to solicit from any "Customer"
5 of Ahern, as defined in § 2.3 of Young's Non-Competition, Non-Solicitation and Non-
6 Disclosure Agreement with Ahern.¹⁷

7 3. On or before **December 23, 2021**, Young must turn over to Ahern, and cease any
8 use of, any of Ahern's documents (including all copies), tangible information, and
9 tangible data to the extent he is in possession of, or has access to, such confidential
10 information. Young is enjoined and prohibited from using or divulging any of Ahern's
11 confidential or trade secret information.

12 4. The emergency motion for a temporary restraining order is **DENIED in all other**
13 **respects.**

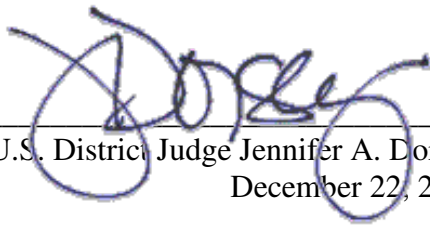
14 IT IS FURTHER ORDERED that this temporary restraining order will automatically
15 **EXPIRE at 5:00 p.m. on January 4, 2022**, unless it is extended by the court for cause or
16 converted into a preliminary injunction.

17 IT IS FURTHER ORDERED that **Ahern must post bond in the amount of \$200 by**
18 **5:00 p.m. on December 27, 2021**, to effectuate this order and recompense Young if it is later
19 determined that he has been wrongfully restrained.

20 IT IS FURTHER ORDERED that Ahern's emergency motion for a preliminary
21 injunction [ECF No. 6] will be heard at **1:30 p.m. on January 4, 2022**, in Courtroom 6D using
22 Zoom video conference. Young has until **December 29, 2021**, to file any response to Ahern's
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¹⁷ ECF No. 5-3 at 4-5.

1 emergency motion for a preliminary injunction. Ahern has **until noon on January 3, 2022**, to
2 file any reply.

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U.S. District Judge Jennifer A. Dorsey
December 22, 2021

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